

REVIEWS

ROBERT MAYNARD HUTCHINS v. AMERICAN EDUCATION

(CHARLES E. CLARK INTERVENING)

THE HIGHER LEARNING IN AMERICA. Lectures on the Storrs Foundation, Yale School of Law, 1936. By Robert Maynard Hutchins.¹ New Haven: Yale University Press, 1936. Pp. 119. \$2.00.

THE HIGHER LEARNING IN A DEMOCRACY. The William Vaughan Moody Lecture, University of Chicago, 1936. By Charles E. Clark.² (Reprinted from the International Journal of Ethics, April, 1937.) Chicago: University of Chicago Press, 1937. Pp. 19.

Reviewed by Cecil H. Driver †

WHEN THERE comes to be published that great dissertation, *The History of Yale Dinner-Table Conversation during the Roosevelt Regimes*, undoubtedly we shall find several chapters devoted to a consideration of President Hutchins' Storrs Lectures and the replies they have evoked. "What do you think of the scheme?" "Did you read John Dewey's review?" and so on. It was all great fun, and both in duration and intensity it was better sport than speculating about the new university President or the election. For most assuredly Dr. Hutchins, with deadly aim, threw a nice little hand grenade into the quiet groves of Parnassus. And now Dean Clark, mindful of the uproar, has considerably provided us with cotton so that we may stop our ears in case there are other detonations to follow.

Let us for the sake of clarity, however, make a distinction at the outset between the negative and the positive sides of President Hutchins' book: between, that is to say, his indictment of existing universities and his constructive proposals. The detailed elaboration of his charges that the American universities suffer from two grave defects—love of money, and anti-intellectualism—has received remarkable endorsement from the most diverse quarters. "He is right on both counts," says Henry Seidel Canby. "To most of these charges we are so sensitive that listening to the recital of our shortcomings gives us a penitential pleasure," says Dr. Charner Perry of Chicago. "I, too, am distressed by the evil results in American Universities of the love of money, of lack of definite purpose, of a growing anti-intellectualism," echoes Dean Clark. And so the chorus swells. But when these readers pass on to the constructive proposals in the book, the cheers of approval die away and the mutters of protest begin to grow into a pretty noisy roar.

The gist of these proposals is simple enough. First, a new educational stage lasting four years is to be intercalated between high-school and university, covering what is now divided between the last two years of the one

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and the first two years of the other. The suggested curriculum, it is maintained, being based on four fundamental disciplines, will satisfy "all the needs of general education in America," since it will provide a basic training in the elements of reasoning, reflection and imaginative awareness. For the majority of citizens this will be sufficient. Moreover, it will provide a firm foundation for the minority capable of profiting from a university education.

Secondly, coherence is to be introduced into the university curriculum by reorganizing it into three major fields, metaphysics, the social sciences, and the natural sciences. Every student will specialize in one field while taking the required minimum of subsidiary studies in the other two throughout his college career. Research work will be excluded from the university. Thus, it is hoped, a "principle of unity" will replace the purposeless anarchy of unrelated courses, and a philosophical spirit of relatedness and reflection will be infused into all fields, so that the university may indeed become again a home of thought. And the hope may be entertained not only that the specialist will have a due sense of his place in the context of the cultural heritage, but also that he will be aware of the nature of his own implicit assumptions and their relation to the assumptions of other specialists.

Now, unlike Dean Clark, I find myself in hearty sympathy with the general end which President Hutchins has in view. If it is true, as he says, that vocationalism is corrupting American university life from within, it is no less true that a similar phenomenon can be observed in England, and that increasing specialization is destroying in British universities any claim they may once have had to providing a general culture or a wide critical outlook. The underlying cause in both cases is the same, namely, the absence of any integrated purpose in the university as a whole, and hence an easy acquiescence in a general policy of *laissez-faire*. But *laissez-faire* in education, no less than in economic life, destroys itself by the consequences of its own inner dialectic. We are beginning to realize this truth in the one field; President Hutchins is animated with a vivid sense of its relevance in the other; hence his book is both an indictment and a program. Moreover, in education, as in economic life, the gage thrown down against the spirit of *laissez-faire* is certain to be picked up by the vested interests. The outcry against President Hutchins' book is proof enough, if proof is needed.

But we must guard ourselves against two recurrent fallacies. On the one hand, the acknowledgment of an indictment involves us in no obligation to accept the first proffered remedy. On the other hand, we must save ourselves from the fatal facility of the false antithesis. In the name of the first principle I find myself unable to accept the details of President Hutchins' program. In the name of the other I cannot accept Dean Clark's implications that a coherent university purpose involves the tragic consequences now to be found in Nazi Heidelberg. This kind of argument seems to me to be on a par with that adumbrated in a famous speech last autumn to show that the New Deal legislation meant "treading the Moscow road."

President Hutchins pleads for a planned education with the same enthusiasm and sincerity that many of our contemporaries show in pleading for a planned economy. And Dean Clark puffs his ruminative pipe over this article in reply—for all the world like a sort of intellectual Stanley Baldwin, cautious, canny, and common sense, conceding here a point and there a point,

but very suspicious of the underlying contention. So I find myself in the unfortunate position of being in partial agreement and partial disagreement with each in turn.

Dean Clark admits the evils that Dr. Hutchins points out, but he makes no positive contribution of his own towards their solution. He is rather concerned, like Burke, to preserve the good we have than to risk the good we wot not of. So he mainly occupies himself with showing the dangers of the proposed alternatives. Most of his points carry conviction, though to one reader, at least, his criticisms of the reformed liberal arts college seem unconvincing and unrealistic, particularly in view of his own admissions. On the other hand President Hutchins' arguments under this head seem extremely cogent as applied both to American education and to English.

Nevertheless, while I want a university to be what President Hutchins wants it to be, I do not believe his plan will help us very much—at least, in the form in which he presents it. Indeed, I must confess that I do not really understand what his plan is, except in the most general sense. Apparently it is all derived from the basic postulate that metaphysics must integrate the subsidiary university purposes. But how are we to determine which metaphysic or whose, since there is no one metaphysic? If every shade of the philosophic spectrum between Haeckel and Hegel is to be represented on the campus, I cannot see that our university will be much more coherent than it is now. Moreover, the problem of shifting emphasis, of changes within the metaphysic, is left untouched. Even graver is the question, What is to prevent the field of philosophy itself from becoming specialized and departmentalized? It is the old issue: *Quis custodiet custodes?* I cannot help thinking that in his justifiable revolt against the multiplicity of electives President Hutchins confuses the objective unity of the curriculum with that far subtler problem of the subjective integration of personality and intellect which the university should foster. And that brings us straight to the question of examinations.

Nothing adequate is said about the nature of the final examinations. This is *not* a mere administrative detail, as President Hutchins seems to imply. For the examination system is everywhere the rudder of educational policy, and real educational reform can only begin where the educational process ends, namely in the examination room. The retroactive implications of any examination system are overwhelming. Apart altogether from the question of topics, of teachers and taught, it will be found for instance that the Oxford "Greats" system will produce one type of man and Yale's course system quite another. I cannot but believe that a fuller elucidation of this problem might reconcile much of the apparent disagreement between President Hutchins and Dean Clark, or at least prepare the way for such a reconciliation. After nine years as an examiner for English state scholarships, I am persuaded that the questions of curriculum, of purpose, and of social implication, focus just at this point. The influence, for example, of an independent examination, conducted by external examiners and based upon a defined and published syllabus drawn up by an independent board of studies, would be conspicuous throughout the entire educational pyramid. In the case of England, it has revolutionized secondary education since the war, though the fact does not appear to have got into the text books. For if the State Scholar-

ship Boards determine on the one side the quality of the student entering the university, on the other side they determine both the quality and the content of educational aspiration within the secondary schools; and these in their turn, by their entrance and scholarship examinations, similarly influence the elementary schools below them. The same general comments would apply, *mutatis mutandis*, to university examination structures.

It is for these reasons that my own positive suggestions, were they of any relevance, would center around this question of the reform of what may be called the *constitutional structure* of the examination system involved. For I believe that such a reform is attainable. But it would carry with it a unity quite other than the unity of metaphysical postulates. That is where I disagree with both President Hutchins and Dean Clark. The one hopes, and the other fears, that broad unity of purpose within the university can only be secured when there is an underlying unity of metaphysic. I cannot accept this contention for I believe both positions depend upon the same kind of fallacy that is involved in the Hegelian interpretation of the State. In other words, constitutional unity is quite other than metaphysical unity; and, as L. T. Hobhouse long ago showed us, a structural purposiveness is far from being the same thing as the homogeneous identity of individual wills.

This line of thought would, too, I believe, give us a point of departure for considering the complicated and vexed problem of specialization and vocationalism—a problem which President Hutchins seems unduly to simplify and Dean Clark unwisely to ignore. It is certainly a serious enough problem for all the democracies. Yet we can, at least, get the statement of it clear. For the problem of vocationalism is the problem of superimposing a particular competence upon that *generalized* awareness we call culture. The preliminary question then becomes: How *wide* do we want that awareness to be, and how *sensitive*? The constitution of our examination structure provides the framework within which conflicting forces making for diverse answers will operate. I no more believe that a coherent examination structure will give us an absolute answer to these questions than I believe that a coherent political constitution gives us an absolute answer to the problems of democracy. In each case the structure but provides the means for the continuous integration of competing intentions into emergent purposes. But in each case the structure is primary and essential if anarchy is to be avoided. Yet neither of the two writers we are considering touches on these matters.

Space does not allow of a full consideration of other features in President Hutchins' book. Yet one extraordinary blind spot must certainly be mentioned. President Hutchins' main plea is for an underlying metaphysical unity in the educational system. What he seems to be unaware of, is that such a unity exists in the United States today. Nothing strikes a foreigner more forcibly on getting acquainted with the educational structure than the amazing uniformity of presupposition and principles in the whole of American educational life. From California to Connecticut the shadow of John Dewey lies dark over the continent, and it will certainly not be removed in our lifetime. Not only can no comparable phenomenon be found in any other democracy today, but I am prepared to argue the case that the alleged "unity" of medieval universities provides nothing comparable either in the thirteenth or any subsequent century. So it would seem that what President

Hutchins wants is not so much a unifying metaphysic as a *different* metaphysic.

Perhaps it is President Hutchins' misreading of history which is accountable for the invalidity of his argument about metaphysics; for when he deviates into historical innuendoes his assertions become startling. Take one example: "Greek thought was unified; it was unified by the study of first principles." When did this miracle occur? What is the principle of "unity" to be found between the thought of Parmenides, of Heraclitus, and of Empedocles? Were Socrates and the traditional Sophists in such fundamental unity that they can give us a model for today? Does the whole episode of the execution of Socrates suggest a very marked degree of unity on first principles? Or is the opening book of the *Republic* redolent of unity? And can it really be said that the Cynics and Cyrenaics, the followers of Zeno and those of Epicurus, derived their philosophies from a world-view more "unified" than that which binds together the reflections, say, of T. V. Smith, W. E. Hocking, Samuel Alexander and Henri Bergson?

Or consider President Hutchins' other assertion that "the medieval university had a principle of unity . . . it was an orderly procession from truth to truth." When and where could this state of affairs be found? Can even the Chicago philosophy department discover the higher synthesis of nominalism, realism, and conceptualism? And even though the acknowledgment of certain fundamental dogmas of the Church was necessary, this platitude cannot be stretched to cover the assertion that there was a principle of unity animating the universities. Even at the height of his renown St. Thomas found some of his basic postulates not merely criticised but fiercely attacked. The reading of these disputations suggests less unity at Paris and Oxford, even among his brother Dominicans, than is to be found between President Hutchins and Dean Clark. Did not John Peckham claim that Aquinas was eventually compelled to submit some of his major theses humbly to the censorship of the Paris faculty, "*donec ipse omnes positiones suas quibus posset imminere correcto, sicut doctor humilis subjecit moderamini Parisiensium magistrorum*"? And what about the famous condemnation of the 219 propositions by the Paris Masters of Theology on March 7, 1270, or the similar condemnation at Oxford eleven days later? But perhaps this "unity" was not to be found until the fourteenth or fifteenth centuries? In which case we are left with the pleasant occupation of looking for it out of the confusing welter of Ockhamism, Thomism, Scotism, Aegidianism, and the Mystics! In truth, it is a futile task. There never was such a unity; and how President Hutchins ever came to suppose there was is not the least of the interesting problems this book raises. Let it be added in fairness, however, that Dean Clark equally shares these illusions. Yet whatever our criticisms or our panaceas, we can all endorse Dean Clark's generous words about President Hutchins—that he has brought forward issues fundamental to democracy itself and that his book has "raised the discussion of education from the trivial."

Reviewed by Myres S. McDougal ‡

PRESIDENT Hutchins' book contains a diagnosis, definitely prescribed remedies, and a religion to make the remedies palatable. "The most striking fact about the higher learning in America," President Hutchins finds, "is the confusion that besets it." There is no "ordering principle;" it is going off in all directions at once; it is, in brief, chaos. The causes of this confusion, rooted deep in the state of the nation, are many and interrelated. First is the vulgar love of money. This makes educational policy whatever anybody—student, donor, or legislator—is willing to pay to make it. Next, and more important, is a misconception of democracy. This leads to two erroneous notions: that "everybody is entitled to the same amount and the same kind of education" and that every citizen, editor, alumnus, or trustee can qualify as an educational expert. A final major cause is our modern idea of progress. Impressed by expansion of our scientific knowledge and improvement in our technology, we have renounced our intellectual heritage, broken completely with the past, and ended "with an anti-intellectualism which denies, in effect, that a man is a rational animal." So much dependence of the higher learning upon external conditions—the diagnosis continues—afflicts us with a strange circularity. "The state of the nation depends on the state of education; but the state of education depends on the state of the nation." Witness the three bewildering dilemmas of professionalism, isolation, and anti-intellectualism. The only excuse a university can have for existence is to provide a haven where truth may be pursued for its own sake; yet public opinion demands a vocationalism that stops at no triviality. Cooperation is badly needed between teachers concerned with different trades and teachers pursuing truth; yet there is no common frame of reference; cooperation might even increase the confusion. The public and the professions are anti-intellectual in temper; yet somehow people must be forced to accept intellectual training. How are these dilemmas and all this confusion to be resolved?

The remedies proposed by President Hutchins are drastic. He demands an evangelistic movement to remake both general education and the higher learning. His general education would begin with the junior year in high school and end with the sophomore year in college. From it he would exclude body building, character building, the social graces, and tricks of trades. For these he would substitute a curriculum of "a deeper, wider utility;" it would seek "the good for which all other goods are only means," the cultivation of the intellectual virtues. The truth is everywhere and at all times the same. An intellect properly disciplined can operate equally well in all fields. Hence the center of his new curriculum must be "the classics," books contemporary in any age, "permanent studies" that draw out the elements of our common nature and link man to the best thought of the past. For an understanding of such studies, Grammar, Rhetoric, Logic, and Mathematics—as the ancients knew them—become indispensable and must be taught. Technology is not to be excluded but would find a place only to the extent necessary for the communication of principles. Without such a general education, the author insists, we can never get a university. Upon its

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basic core of common knowledge and cultivation of the intellectual virtues we might be able to erect a more intelligible higher learning.

In President Hutchins' higher learning remedies and religion become hopelessly intertangled. "All that can be learned in a university," he states, "is the general principles, the fundamental propositions, the theory of any discipline." Students must, and can, be taught to think about fundamental problems. Three categories exhaust "the proper subject matter" for higher learning—metaphysics, the social sciences, and natural science. By natural science the author means "the study of nature;" he would include enough recent observations to illustrate principles. His social sciences embrace ethics, politics, economics, and "such historical and empirical materials as may be needed" to aid in the "guidance of human action." But the gathering of data, important as it is, has no place in his university proper; such work must, if we are to avoid confusion, be carried on by institutes, separate from, though established near and controlled by, the university. What function metaphysics? It is to pervade the whole. The "common aim of all parts" of the university, its "unifying principle," is, as indicated above, to be the pursuit of truth for truth's own sake. Yet such pursuit alone cannot insure unity. Some basic, ordering, proportioning discipline, some "science of first principles," must direct our activities. "Real unity," the author urges, "can be achieved only by a hierarchy of truths which show us which are fundamental and which subsidiary, which significant and which not." In medieval times this hierarchy was established by theology; but today we are a faithless generation, taking no stock in revealed truth. It is futile for us to look to theology. We can only turn, as did the Greeks, to metaphysics. "It is in the light of metaphysics that the social sciences, dealing with man and man, and the physical sciences dealing with man and nature, take shape and illuminate one another. In metaphysics we are seeking the causes of things that are. It is the highest science, the first science, and as first, universal. It considers being as being, both what it is and the attributes which belong to it as being." To get a unified university we moderns must, then, "revitalize metaphysics and restore it to its place in the higher learning." This achieved, we might even be able to change the character of our civilization and, ultimately, to establish rational order in the modern world. Yet for the accomplishment of these miracles no "specific"—only the "most rational"—metaphysical system is indispensable.

What is to happen to our professional schools? As such—that is, as "trade" schools—*delendae sunt*. In his reformed higher learning President Hutchins escapes the dilemma of vocationalism; he makes no distinction between professional and non-professional disciplines. For the "gestures of varying degrees of wildness" now made by those attempting to teach the professions he would substitute study under his three major faculties of metaphysics, the social sciences, and natural science. Technical institutes can be established in connection with the university to supply any required background of special knowledge and training in special techniques. Today the prospective lawyer, for example, is diverted by attempts to teach him the art of practice from what he might possibly learn in law school—"the theory, the fundamental propositions, the general principles of the law." The curriculum he studies "is confined to those subjects which experience, tradition, or the

state examinations have sanctified." He is taught, in brief, by the cook-book method. Yet, paradoxically, he might be better prepared even for practice if he were trained to think in the subject matter of his discipline; "a grasp of theory might enable him to meet practical situations which were overlooked or not foreseen by his instructors." Hence, in the new higher learning the prospective lawyer will take his metaphysics along with the prospective clergyman or doctor. This is to prepare him to master the subject that must be central in his new curriculum: jurisprudence. Without metaphysics, "ethics, politics, and economics are meaningless;" and jurisprudence "consists of ethics and politics and the philosophy of law based on them." Yet jurisprudence is not to be the whole of legal study. To it must be added "empirical and historical knowledge of society, the history of law and legal institutions, economics and economic history." The tricks of his trade the law student can learn in one of the attached institutes.

Critics have found much mystery in this book. The key is, I think, the author's high idealism. His heroic purpose is to free universities from the pressure groups that now dominate them and so, eventually, to free us all, teachers and taught, from all kinds of contemporary dogmas. Yet he cannot ignore, he would even take advantage of, the commonplace truth that man must have a faith. "We are," he says, "as a matter of fact, living by the haphazard, accidental, shifting shreds of a theology and metaphysics to which we cling because we must cling to something." Let us, then, recognize our need and get the most rational faith we can. Today the whole world needs, as never before, a symbol that "represents an abiding faith in the highest powers of mankind." Temporarily, too—I am interpolating here—we must persuade the common man that the whole business of education is so occult that he cannot hope to understand it; patients must be rendered unconscious before major surgery. For the achievement of these paradoxical aims metaphysics would appear, on first glance at least, to have been designed by nature. To begin with, it can be described as the logic of logics, the super-instrument whereby man's reason can be screwed up to the nth degree of performance. What base for faith could be more "rational?" Better still, after several hundred years of controversy nobody knows what metaphysics is. What could be more occult? A skeptic can always be confounded by the suggestion that he is, without knowing it, some particularly vicious kind of metaphysician. The logical implications of our only language and the fact that we must all, in our ignorance of the "universe," rely on some kind of faith, make "proof" easy.¹ Furthermore, under the label of metaphysics faculty and students can be forced to a more critical study of all of man's verbalizing and symbolizing activities. Such study, by sharpening our conceptual tools and pointing to new problems, might even aid empirical discovery; certainly it could be made to dramatize the limitations of arm-chair speculation. Can there be any wonder—in the light of all these aims—that the author must write with such studied ambiguity? Yet I think, as numer-

1. The author (p. 103, n. 5) cites a dilemma from Aristotle: "You say one must philosophize. Then you must philosophize. You say one must not philosophize. Then (to prove your contention) you must philosophize. In any case you must philosophize." From this quotation I gather that the author equates philosophy and metaphysics, and both with any kind of verbalizing.

ous other critics have thought, that there are dangers in over-emphasis on this timeless, denatured religion President Hutchins is urging to make his remedies palatable.

The obvious danger is that credulous converts may assume that metaphysics is not merely a religion but some esoteric instrument of discovery, independent of and in competition with scientific method. President Hutchins does, as has been seen, use the ancient words over which philosophers have fought for so long. Even teachers may be inclined to take his words literally; the glee that greeted his first supposed desertion from the ranks of the "realists" is well known. Logic offers no way to refute a mystic; one can, however, ask for more details of the vision. Perhaps, because of the author's ambiguities, a reviewer may be granted a few ancient questions. How can general principles, fundamental propositions, and theory be divorced from practical problems? What is this truth that is everywhere and at all times the same? Just what peculiar technique for its discovery does metaphysics offer? How does metaphysics ferret out the "causes of things that are," "being as being," and the "attributes of being?" If the propositions of this, "first," "highest," and "universal" science partake of the tautology of logic, how does the metaphysician hope—without the aid of the empiricist—to increase man's control over his environment? If its propositions are not tautologies but tentative hypotheses about the physical world, how is the metaphysician different from, what are his advantages over, the empiricist? What other kinds of propositions, if any, are there? What their source, their test, their function? How, in detail, does metaphysics establish and maintain its vaunted hierarchy? What kind of unity does it produce? Does this "unity" have any consequences other than verbal? Why is "unity" a more practicable or desirable ideal than "diversity"? Why should scholars forsake their scientific tools to worship at the shrine of one of two polar words? For President Hutchins, of course, these questions are as irrelevant as they are rhetorical. He states specifically that "thinking cannot proceed divorced from facts and from experience;" and throughout his general education and his higher learning, as the summaries above should indicate, he saves room for enough facts to "illustrate" principles. In fact, the metaphysics he advocates—no "specific," only "the most rational" system—could even be expanded, as one of his recent defenders has insisted, to take in the most anti-metaphysical of philosophies. "Opponents of metaphysics," this defender writes, "attack as metaphysics precisely what Mr. Hutchins means by a lack of metaphysics."²

A second danger is that metaphysics can be, and often is, made to serve the purposes not of a liberating but of an enslaving faith. "To be grandly vague," a critic of fascism writes, "is the shortest route to power; for a meaningless noise is that which divides us least."³ Dean Clark has pointed to the striking similarities in the language of President Hutchins and that

2. McKeon, *Education and the Disciplines* (1937) 47 INT. J. ETHICS 370, 378. Empirical confirmation of this can be found in the fact that the title page of Professor Carnap's latest book bears the inscription "Professor of Philosophy in the University of Chicago." CARNAP, *THE LOGICAL SYNTAX OF LANGUAGE* (1937).

3. Herman Finer, quoted in SMITH, *THE PROMISE OF AMERICAN POLITICS* (1936) 87.

of the German minister of education.⁴ Unity alone is a symbol too barren to attract followers; metaphysics, if not an instrument of discovery, cannot create new social ideals; the rational sciences of politics and ethics have never produced anything but commonplace talk about "individual happiness," "the good life," and "the common good." Certainly it would appear that metaphysics, if it is to have any effect in determining human behavior, must be made to implement some social ideal taken from without its own great arabesque of words. But what is to determine this choice of an ideal from without? What is to confine it to "liberal" ideals? The fact is, as we all know, that each of the multitudinous and conflicting "isms" today clamoring for our loyalty seeks, and often obtains, sanctification in its own peculiar brand of metaphysics. What we have is a chaos of both "isms" and metaphysical systems. Which metaphysics is the most "rational"? How does President Hutchins propose to quell all this confusion and accomplish his major purpose of liberating us from all kinds of nostrums, dogmas, and "isms"? In terms all he offers is educational authoritarianism. "In the current use of freedom," he writes, "it is an end in itself. But it must be clear that if each person has the right to make and achieve his own choices the result is anarchy and the dissolution of the whole."⁵ This is strange doctrine from a liberal; it sounds much like the dictatorial dogma that no man but one has a "right" to his own opinion; obviously it can be made to serve any end. Yet, again, if the author's metaphysics is comprehensive enough, as his arch defender alleges, to take in the most anti-metaphysical of our modern philosophies, there might be profit in its study. It could be made a metaphysics to end metaphysics, a faith to end faiths. "First principles," Professor McKeon writes,⁶ "are frequently accepted by habit and inertia, or by whim and emotional preference, or by authority, whether of church or academy or class." What President Hutchins advocates is "careful, laborious examination of first principles with all the devices that reason or the assembled experience of mankind can effect."⁷ Such a study would undoubtedly end in a frank confession of our ignorance of man and his universe and a resolute determination to reduce that ignorance by scientific methods (not omitting theory).

A final "imaginary horrible" brings us back to legal education. Too much emphasis on jurisprudence could return legal scholars to the sterile dialectics of an earlier day. What are these fundamental propositions and general principles that can be taught apart from "practice" and yet enable the stu-

4. Clark, *The Higher Learning in a Democracy* (1937) 47 I:R. J. ETHICS 317, 319.

5. Contrast the eloquent answer of Dean Clark, *supra* note 4, at 324: "In the very words of the criticism leveled against present university education, it is both anti-intellectual and vocational. It is anti-intellectual in that the scholar must conform not to the demands which his own mind makes of him but to that metaphysics, that view of the good life, which the university authorities set before him. It is vocational not in any narrow sense of instructing in skills to be used next week or next year but in the sense of training merely to get by, in conformity to set standards, with adventure into unknown or unrationalized fields of knowledge taboo. These dangers, even if merely potential, are too important to be lightly dismissed."

6. McKeon, *loc. cit. supra* note 2.

7. *Ibid.*

dent "to think in the subject matter" of his discipline, to "meet practical situations" not foreseen by his instructors? Speculative jurists have sought them without success for over two thousand years. "Jurisprudence," a great English authority on Roman law has written,⁸ "has no independent existence. Its formulae are meaningless except in relation to concrete rules. It is a part of the law." Even when removed from the transcendental and confined to practical problems, jurisprudence—at least as exemplified in England and America for the last century—is largely a monument to the folly of attempting to overpower "truth" by the formal analysis of circular legal doctrine. Learned scholar after learned scholar has wasted his energies manipulating rights, powers, privileges, immunities, liberties, duties, disabilities, liabilities, and no rights, and composite concepts like ownership, possession, title, lien, estate, entity and so forth, as if some manipulation of these concepts could, and should, control the behavior of judges.⁹ These efforts have not been wholly without effect; they have fortified tradition, have provided a comfortable faith in a government of laws and not of men, and have driven weak or timid judges, because of the supposed inelasticity of the concepts, to harsh decisions in particular cases; but they have done little to shed light on the actual operation of our legal system or to give it new direction. Such jurisprudence is, in the words of Thurman Arnold, "the shining but unfulfilled dream of a world governed by reason."¹⁰ This ancient, impotent jurisprudence is not, of course, the kind that President Hutchins is advocating. He demands a new and practicable jurisprudence; he would liberate us from conventional legal absolutism. This new jurisprudence is to be, he elaborates in a recent article,¹¹ an "ordered relation" of three studies, "the study of cases," "the study of how law operates in fact," and "the study of legal philosophy." The study of how law operates in fact takes in the "economical, social, and political" bases and effects of decisions; the study of legal philosophy takes in psychology as well as the rational sciences of ethics and politics. Just how jurisprudence is to supply this "ordered relation" or how it is to be supplied to jurisprudence is not made clear; but the important point is that in his positive program he simply reaffirms the "faith" of our legal "realists." What he is after is, again, a broadening of horizons—a jurisprudence to show the limitations of jurisprudence. "No law professor can claim to be one," he now writes,¹² "if he separates himself altogether from the 'realistic' movement." His own contribution to the movement is, I think, an incomprehensible verbal "screen" behind which the "realists" may be able, if they are astute, to put their aspirations into practice. He has taken the advice of the "neo-realists" to capture the weapons of the enemy and

8. Buckland, *The Difficulties of Abstract Jurisprudence* (1890) 6 L. Q. REV. 436, 438.

9. I do not belittle the destructive power of the Hohfeld system or the critical labors of the scholars who have used that system to shave down "fundamental" concepts and generalizations.

10. ARNOLD, *THE SYMBOLS OF GOVERNMENT* (1935) 58.

11. Hutchins, *Legal Education* (1937) 4 UNIV. OF CHI. L. REV. 357, 368.

12. *Id.* at 362.

attack in the name of what you would reform.¹³ Whether the dangers in his ambiguities are real remains to be seen; Barnum might even come to believe in his own show.

THE HISTORY OF QUASI-CONTRACT IN ENGLISH LAW. By R. M. Jackson.¹ Cambridge: The University Press, 1936. Pp. xxxi, 134. \$3.75.

IN the preface to his Tagore Law Lectures Dr. Winfield recalled the temptation to which he had been put to devote them completely to the subject of quasi-contract, and though unfortunately he did not yield to this half-formed intention, students were grateful for the searching examination of the various causes of action said to be *quasi ex contractu* which he did provide in a chapter of that volume. A chapter did not permit him to deal adequately with the beginnings and the development of quasi-contractual relief, and it is to these that Mr. Jackson in the present volume has turned his attention. Though the subject has been dealt with in parts by Langdell, Ames, Street, and Sir William Holdsworth, there is available no detailed historical account of quasi-contract in English law, a deficiency which goes far to explain the difficulties modern lawyers and judges have found in explaining these obligations and in assigning them a proper place in an assumed precise dichotomy of tort and contract. The unfortunate *Sinclair v. Brougham*² is in large measure responsible both for the renewed interest in the study of quasi-contractual obligations in England and for the present day tendency to define quasi-contract in terms which exclude any reference to a basis in contract, whether "fictional," "implied in law," or "constructive," and proponents of this view have buttressed their argument by an appeal to history in the person of Lord Mansfield. Thus Dr. Winfield has pointed out that Lord Mansfield in *Moses v. Macferlan*³ altered the basis of the action for money had and received by introducing a theory of *acquum et bonum* to replace the theory of a contract implied in law.⁴ Dr. Hanbury has likewise noticed that Lord Mansfield introduced notions of an equitable character which gave the commonplace quasi-contractual obligation the appearance of an equitable institution enforced by common law remedies.⁵ And Mr. Fifoot, in a very recent book, regards *Sinclair v. Brougham* as substituting at the basis of quasi-contract Lord Sumner's fictitious contract for Lord Mansfield's unjust enrichment.⁶ These views Mr. Jackson finds doubtful. Behind Lord Mansfield's oratorical flourishes he finds no abandonment

13. Hamilton, Book Review (1936) 142 NATION 51, 52 [review of ARNOLD, THE SYMBOLS OF GOVERNMENT (1935)].

1. Lecturer in Law, University of Cambridge.

2. [1914] A. C. 398.

3. 2 Burr. 1005 (1760).

4. THE PROVINCE OF THE LAW OF TORT (1931) 127, 134.

5. MODERN EQUITY (1935) 93.

6. LORD MANSFIELD (1936) 247-48.

of the accepted rules. The decision in *Sinclair v. Brougham* he regards therefore as the logical outcome of principles accepted for almost three centuries, and thus, though he regrets that the court followed the law instead of inventing a more sensible rule, he finds Lord Mansfield's prop wrongly placed beneath the superstructure. In this he is perhaps not wholly convincing, and whether Lord Mansfield intended to attach the action for money had and received indissolubly to the idea of agreement remains an open question. Certainly Mr. Jackson's distinction between *aequum et bonum* as the material but not the formal source of the obligation would have met with something less than the whole-hearted approval of that intellectual but unacademic gentleman.

Quasi-contracts form a *sorte de monstre légendaire*, and in both Roman and English law they defy reduction to principle. The courts of common law in the mediaeval and early modern period developed in their own empirical way the law in respect to various miscellaneous obligations which came to be known, in later times, as quasi-contracts. Development within the limits of actions begun by original writ was difficult, and prior to the rise of *indebitatus assumpsit* the law of quasi-contract seems to have been but rudimentary, but Mr. Jackson has indicated quite fully some quasi-contractual aspects of the action of account and the use of debt to enforce obligations essentially quasi-contracts. Fortunately in this first part of his volume Mr. Jackson was unable to avoid a study of the nature and scope of these actions, for the subject-matter is implicated with procedure and much confused by it. Both actions receive careful attention: we may single out for notice here his admirable criticism of Langdell's theory of account and his investigation into the relation between debt and account and the reasons for the virtual disappearance of the latter as a common law action. The second half of the volume is devoted to quasi-contracts from the late seventeenth century onwards, when the action of *indebitatus assumpsit*, developing as a remedy in contract, was extended to include quasi-contracts as well. We may trace its progress from the grudging permission to extend the action given by Holt to its complete establishment as a popular remedy by Lord Mansfield. Since Mr. Jackson presents the subject under headings which emphasize the character of the several species of quasi-contractual obligation rather than the procedural remedies that enforce them, this second section likewise takes him far afield and new light is thrown upon many questions of adjective law especially troublesome to those who have occasion to consult the refractory seventeenth century reports. The volume closes with several sections upon the theoretical basis of the action, but in view of Mr. Jackson's forthcoming supplementary volume on the modern law of quasi-contract, discussion directed toward these sections is premature and must be postponed until his more complete treatment is made available.

The volume provides a background for Dr. Winfield's survey of the existing English law, though it is clear from what I have said that the author's disclosure of the principal historical foundations upon which the present law has been built does not support it unaltered or in every particular. Mr. Jackson's volume will fill a prominent place in the series of Yorke Prize

Essays to which it is the latest addition. Mention must be made of Professor Hazeltine's characteristic editorial preface which has become usual in this series of Cambridge studies and to which readers have become accustomed to turn with much profit.

S. E. THORNE†

Chicago, Ill.

PRINCIPLES OF CONFLICT OF LAWS. By George Wilfred Stumberg.¹ Chicago: The Foundation Press, 1937. Pp. xl, 441. \$5.00

STUDENTS desiring an excellent notebook on the Conflict of Laws could scarcely wish for anything superior to Stumberg's *Principles*. The book follows substantially the arrangement of the more commonly used casebooks. It states the basic principles, rules or points of view in black-letter text, which is followed by explanations and a critical discussion of the leading cases contained in the casebooks. Matters of lesser importance are relegated to footnotes, which are not overburdened with citation of cases but are full of interesting materials and form an important complement to the text.

The average student will find in the text everything he deems necessary for his requirements; the more ambitious student can, through the footnotes, get a more comprehensive grasp of the subject. From teachers, also, Stumberg's book should receive a most hearty welcome. The materials dealt with in a course of the Conflict of Laws are so extensive that within the time usually allotted only the most elementary aspects of the subject can be considered. The teacher can now refer the student to this book as a source of general information, and concentrate in class on the more difficult problems. Both student and teacher owe a debt of gratitude to Professor Stumberg for so excellent a guide, written in such a clear and attractive style.

The author takes a realistic approach to the subject. He does not take all life out of it by an attempt to reduce everything to logical rules. When there is conflict he frankly says so, states the pros and cons, and generally expresses his personal opinion on the point in question. The student sees the Conflict of Laws as it actually is, with all its attractiveness and imperfection. The book is thus a wholesome antidote to the Restatement of the Conflict of Laws.

Professor Stumberg does not confine his discussion to the decisions of Anglo-American courts, but takes in also the legal literature in general and the Restatement. In preparing an elementary treatise, he could not, of course, go very deeply or fully into the periodical literature, but he has done so as far as the limits of space permitted. He refers to the Restatement throughout, calling special attention to it whenever its provisions give rise to doubt or call for criticism. All in all, the student gets a wider perspective of the

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subject than is afforded by any other existing American treatise. The author reveals an open-mindedness and soundness of judgment deserving the highest praise.

Professor Stumberg's general point of view is shared so fully by the reviewer that it seems unnecessary to consider this aspect of the work. To single out minor differences of opinion would be unprofitable.

ERNEST G. LORENZEN†

New Haven, Conn.

THE PRESIDENT'S CONTROL OF THE TARIFF. By John Day Larkin. Cambridge: Harvard University Press,¹ 1936. Pp. xii, 207. \$2.00.

FOR THOSE who think the Supreme Court's doctrines regarding the delegation of legislative power are anything more than verbiage to cloak the results of "undisclosed major premises," this small volume is recommended reading. Against an analysis of Chief Justice Taft's opinion in the *Hampton* case,² it examines the administrative provisions of the tariff acts, those of 1922 and 1930 especially. Delegation is piled upon delegation—power to control the Tariff Commission, to alter statutory rates, to change classifications, to revalue imports, to add duties to prevent dumping or to offset foreign currency devaluation—up to the climax in the reciprocal trade act of 1934, which delegated power to bargain away any of the previous delegations. Almost complete legal authority is vested in the President to annihilate or to stimulate foreign trade as he wishes, and with the Court's full consent. The fiction of a Congressional standard to be applied is exposed by considering the inner inconsistencies of "cost-equalization." It is an instructive case history in delegation.

In other respects the book falls short. It wants perspective. Why the degree of delegation? The author does not get at one of the major premises of the *Hampton* case, namely, that nothing the President is likely to do in adjusting tariffs could be worse than the way Congress does it.³ And the grasp of constitutional law is not always sure. Dr. Larkin argues, for example, that there is and should be no judicial review of tariff adjustments under the "flexible" provisions—which may readily be granted. But he labors the point unnecessarily because he insists upon regarding a tariff as an exertion of the taxing power solely. That it is a regulation of foreign commerce is a sug-

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1. But the proofreading is measureably below Harvard standards.

2. 276 U. S. 394 (1928).

3. Fortunately, this job has been thoroughly done in a book too recent to be included in the author's bibliography: SCHATTSCHNEIDER, *POLITICS, PRESSURES, AND THE TARIFF* (1936), a study of the process by which the Smoot-Hawley tariff was drafted and passed.

gestion he makes only to dismiss it cavalierly;⁴ yet it would at once have lightened his argument and have indicated another major premise of the *Hampton* case.

HARVEY C. MANSFIELD†

New Haven, Conn.

THE LAW AND PROCEDURE OF INTERNATIONAL TRIBUNALS, Supplement to the 1926 Revised Edition. By Jackson H. Ralston.¹ Stanford: Stanford University Press, 1936. Pp. xx, 231. \$4.00.

AS GOVERNMENTS began to be more willing to publish the records of the settlements of international claims, the Anglo-American system of case-method collection has been turned with increasing frequency to the collection, arrangement and critical analysis of cases of international law interest. Since the publication of Mr. Ralston's *The Law and Procedure of International Tribunals* in 1926, international lawyers have added to their arsenal of primary sources, among others, such series as the *Annual Digest*² and the *Fontes juris gentium*,³ Series A, which in section 1 deals with the decisions of the Permanent Court of International Justice and in section 2 with the decisions of the German Supreme Court involving international law. While there is some overlapping of material, the method and design of these three source books are so different that a library's inclusion of one should not indicate the exclusion of the other. Mr. Ralston has digested in brief form the findings of international tribunals on a wide range of international problems. He has restricted his material to cases of purely international interest. Following roughly the same patterns of arrangement, the *Annual Digest* has included, in addition, decisions of national courts involving questions of international interest. None of the three indulge in expansive critical comment.

In the *Supplement*, in which he brings his 1926 volume "as nearly up to date as may be," Mr. Ralston employs the technique which he used in the 1926 edition. At certain points he makes explicit cross references to sections

4. P. 113. The fact that the Court ignored this ground in the *Hampton* decision surely means only that since it was prepared to sustain both the delegation and the tax it did not need to find additional support for the act. See 2 WILLOUGHBY, *THE CONSTITUTION OF THE UNITED STATES* (2d ed. 1929) 680; Cushman, *Social and Economic Control Through Federal Taxation* (1934) 18 MINN. L. REV. 759, 767; Board of Trustees of University of Illinois v. United States, 289 U. S. 48 (1933); cf. *Veazie Bank v. Fenno*, 8 Wall. 533 (U. S. 1869).

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1. Author, *INTERNATIONAL ARBITRAL LAW AND PROCEDURE* (1909); *DEMOCRACY'S INTERNATIONAL LAW* (1922); *INTERNATIONAL ARBITRATION* (1929).

2. Published by the Department of International Studies of the London School of Economics.

3. Viktor Bruns, editor, director of Institut für ausländisches öffentliches Recht und Völkerrecht, Berlin.

in the main volume. These factors make for ease in using the two books together.

In spite of the well-balanced use of quotations, often the brevity of Mr. Ralston's statement of a case seems barren and makes the summary system of the *Annual Digest* seem more attractive. However, the great scope of material which Mr. Ralston covers in the two volumes and the ease with which they may be used, more than compensates for any passing desire for more expansive treatment.

Although well qualified to do so, Mr. Ralston seldom surrenders and makes critical comments upon individual cases or upon groups of cases. Occasionally he does so, as in the *Clipperton Island* dispute between France and Mexico⁴ and the discussion of the rules on denial of justice.⁵ These comments, made by a lawyer experienced in international affairs, are deeply thought-provoking, and are but further evidence of the wealth of experience and critical judgment which has gone into the making of the book.

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4. P. 156.

5. P. 42 *et seq.*

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